

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jan Weber
Serial No. : 10/762,815
Filed : January 22, 2004
Title : MEDICAL DEVICES

Art Unit : 3734
Examiner : Kevin T. Truong
Conf. No. : 6109

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Commissioner for Patents
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PRE-APPEAL BRIEF

This brief is directed to clear errors set forth in the final Office Action mailed 9/11/07.

The Office Action is in clear error because the Examiner only rejected dependent claims 1-17, 19, 20, 22-26, and 63-66 as allegedly anticipated by U.S. Patent 6,340,367 ("Stinson"). All of these claims depend, either directly or indirectly, from independent claim 76. These claims all depend from independent claim 76, which requires "a polymer member; and a metal member contacting the polymer member, wherein the members are arranged such that the metal member does not form a closed current loop." Contrary to the structure set forth in claim 76, the arrangements disclosed by Stinson include metal members that form closed current loops. As shown in Figs. 2, 3, and 5-7 of Stinson, the metal members form a criss-cross pattern that would inherently form a closed current loop. Accordingly, the rejection of claims 1-17, 19, 20, 22-26, and 63-66 over Stinson should be withdrawn. Moreover, because the Examiner has not even addressed the elements of independent claim 76 in this rejection, the rejection is in clear error.

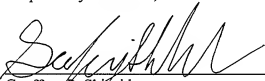
The Office Action is also in clear error for withdrawing claim 76, the only independent claim, from consideration. The Office Action alleges that claim 76 was drawn to non-elected Figure 7. This is false. Independent claim 76 is generic to all of the species of Figures 1-4 and 9 and the species of Figures 5-8. Both species include arrangements where the "electrically conductive portions (as shown, wires 24) that cannot form a closed current loop." Specification, page 7, lines 4-5. For example, the structure shown in Fig. 1 includes at least one helix shaped wire 24 that does not form a closed current loop. Furthermore, Examiner Truong, in a telephonic interview on October 31, 2007, admitted that claim 76 was generic and stated that he would remove finality of the office action and examine claim 76. Accordingly, the Office Action is in clear error.

Applicant filed an after-final reply addressing these clear errors on November 6, 2007, yet never received an Advisory Action. Accordingly, Applicant further requests an Advisory Action addressing the remarks submitted in the reply filed November 6, 2007.

This brief is being submitted with a Pre-Appeal Brief Request for Review, Notice of Appeal, Petition for a three-month extension of time, and corresponding payment authorization. We do not believe that any fee is due for the three-month extension because an after-final reply was filed on November 6, 2007, within two months of the Final Office Action mailed September 11, 2007, and no advisory action has yet been mailed. See MPEP 710.2(e)(I) and 37 CFR1.136(a). If we are in error, and a fee is required for the three-month extension, please apply the required fee and any other charges or credits to Deposit Account No. 06 1050. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 3/11/2008



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